**BEFORE THE WASHINGTON STATE**
**UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of<br><br>COMCAST PHONE OF WASHINGTON, LLC<br><br>Application for Mitigation of Penalties of for Stay<br>…… | ) | DOCKET NOS. UT-031459 and UT-031626 |
| In the Matter of<br>COMCAST PHONE OF WASHINGTON, LLC<br><br>Petition for an Interpretive and Policy Statement or Declaratory Ruling<br>…….. | ) | **AT&T'S PETITION FOR REVIEW** |

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit this Petition for Review of Order No. 03 - Initial Order on Cross-Motions for Summary Determination in the above-captioned proceedings. In support of its Petition, AT&T states as follows:

1. In his Order No. 03, the Administrative Law Judge ("ALJ") summarizes the proceeding as raising:

> issues about the *interpretation and application* of rules the Commission adopted in General Order No. R-507 … . The rule most centrally at issue, WAC 480-120-439 … establishes record keeping and reporting requirements related to service quality standards set forth in various sections of chapter 480-120 WAC.[1]

Well put.

2. Whether or not WAC 480-120-439 applies to Comcast and other similarly situated competitive local exchange carriers ("CLECs") turns on the question of whether

[1] Order No. 3 at 4, ¶ 6.

the term "local exchange carrier" or LEC, when used in the statutory context of the Class A and Class B distinctions includes CLECs.[2]

3. The term LEC, by itself, has historically in this State and throughout the country and industry meant what is now known as "incumbent local exchange carrier" or "ILEC."[3] In fact, the ALJ essentially acknowledged that when he said "[t]he acronyms ILEC and CLEC were not in widespread use, if they had been coined at all, prior to the federal Telecommunications Act of 1996."[4] Because its historical use continues to be pervasive in many existing statutes, whenever one encounters the term "LEC," it is necessary to approach it with caution and not merely assume that it means both ILEC and CLEC.[5] Rather, the term and its intended use is ambiguous at best without a review of Legislative intent, industry use and historical statutory reference.

4. In rendering his decision, the ALJ states,

> Commission rules, like statutes, must be construed in accordance with established legal principles; the Commission cannot simply ignore those principles in favor of policy outcomes. Thus, we will not consider policy arguments in any detail … where we resolve as a matter of law the parties' dispute concerning whether WAC 480-120-439 applies by its terms to Comcast.[6]
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> [Comcast's] argument fails under the plain meaning standard for statutory construction. The definition in WAC 480-120-021, by its plain terms, includes all local exchange companies (LECs) … .[7]

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[2] *See* WAC 480-120-021.
[3] *See* AT&T's Motion for Summary Determination at 3 – 6; AT&T's Response to Summary Determination of Qwest at 3 – 5; Comcast Motion for Summary Determination at 4 - 7.
[4] Order No. 03 at 13, n. 9.
[5] The ALJ considers an interpretation of the term LEC that could exclude both ILEC and CLEC, which he ultimately concludes would be an absurd result. Order No. 03 at 10, ¶ 22 – 11. He is correct that such an interpretation is an absurd result, but to come to this particular interpretation requires that the ALJ ignore Legislative intent and the long-standing industry use of the term LEC. Analysis in a vacuum is contrary to the objective of statutory interpretation.
[6] *Id*. at 8, ¶ 17.
[7] *Id.* at 10, ¶ 22.

The decision to essentially ignore "policy," and more accurately, Legislative intent and the long-standing industry use of the term LEC in the context of Class A and B distinctions constitutes reversible error.

5. With respect to "established legal principles" of statutory interpretation, the Washington Supreme Court has stated, among other things:

> If the statute's meaning is plan on its face, we must give effect to the plain meaning as an expression of legislative intent. The "plain meaning" rule includes not only the ordinary meaning of the words, but the underlying legislative purposes and closely related statutes to determine the proper meaning of the statute. If, after the plain meaning analysis, the statute still remains susceptible to more than one reasonable meaning, we consider it ambiguous and it is appropriate to resort to aids of construction.[8]

Furthermore, the Washington Supreme Court clarified "[i]n determining plain meaning, we may look to 'all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'"[9] It stated further that "references to *commercial terms should be given the meaning commonly used in the regulated industry*, absent clear legislative intent to the contrary."[10]

6. Lower courts have applied the plain meaning analysis as follows: "in interpreting a statute, this court strives 'to best advance' the underlying legislative purpose. We start with interpreting the plain meaning of the language on the face of the statue and closely related statutes in light of the underlying legislative purpose. Moreover, we interpret the statue in its entirety, reviewing all of its provisions in relation to each other."[11] Likewise, another lower court has confirmed "a well-settled canon of statutory interpretation is that the court's primary duty is to determine and implement

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[8] *Washington Public Ports Ass'n v. Dep't of Revenue*, 148 Wash. 2d 637, 62 P.3d 462, 466 (Wash. 2003).
[9] *Restaurant Dev., Inc. v. Cananwill, Inc.*, 80 P.3d 598, 601 (Wash. 2003).
[10] *Id.* at 603 (emphasis added).
[11] *Gallo v. Dep't of Labor & Indust.*, 81 P.3d 869, 872 (Wash. Ct. App. 2003).

legislative intent. … Thus, to interpret [the statute], we first discern the legislative intent and then interpret the statute to effectuate this intent."[12]

7. AT&T has proven, in its previously filed Motion for Summary Determination and Response, that the industry use of the term LEC in conjunction with the Class A and B distinctions has long been understood to mean ILEC, that the Washington Legislature's use of the term LEC in the context of Class A and B distinctions has always meant ILEC and that the Commission's rules employ the term LEC in the context of Class A and B categories to mean ILEC. Thus when considering the term "commonly used in the regulated industry" and the Legislative intent, the plain meaning of the term LEC in the context of the Class A and B distinctions means ILEC, not CLEC. Even beyond Legislative intent and industry use, the term historically has always meant incumbent because competitors were not even contemplated at the time Class A and B distinctions were first applied to "LECs."

8. Furthermore, Legislative intent is clear, competitors are to be minimally regulated by the Commission.[13] "Minimal" regulation, pursuant to the statute, means competitors need not file tariffs and need, at the very least, only keep accounts according to regulation, file financial reports, keep current their price lists and cooperate with the Commission regarding consumer complaints.[14] Nothing here suggests that the Legislature intended for the Commission to regulate a competitor's service quality. The Commission's goal, as manifestly clear in its statutory directives, is not to regulate competition, but rather to replace regulation with competition. Unlike Qwest or any

[12] *Troxell v. Rainier Public School Dist. # 307,* 80 P. 3d 623, 624 (Wash. Ct. App. 2003)(considering whether a complaint filed on the 60th day fell within the statutory "60-day waiting period").
[13] RCW 80.36.320.
[14] *Id*.

other incumbent, Comcast has had to earn, through competition, every single telephone customer it has acquired in this State. In contrast, the large incumbent customer bases were not won through high service quality and customer satisfaction over-time, rather they were awarded by monopoly franchise to the incumbents with guaranteed rates of return. That is why service quality requirements and reporting obligations were created in the first instance—they were a surrogate to competition put in place to ensure service quality where no incentive to provide superior or even good service quality existed. Competitors do not need the same regulatory incentives that Qwest or other incumbents need. Thus, the Washington Legislature recognized that parity of regulation as between incumbents and competitors was not required or even desired.[15]

9. Finally, expanding the Class A and B distinctions to include CLECs, as Staff apparently desires now, does not and did not in this proceeding (or any pervious rulemaking) conform to the criteria set out in the Governor's Executive Order 97-02 requiring, among other things, that the Commission do an analysis to determine the need and cost of applying the service quality reporting requirements to CLECs. No such analysis exists for the expansion of this rule.

WHEREFORE, AT&T—for the foregoing reasons—respectfully requests that the Commission reverse the ALJ's initial decision in the above-captioned proceeding and find that WAC –120-439 and WAC 480-120-021 apply to ILECs and not CLECs. Alternatively, AT&T requests that the Commission re-open the rulemaking to consider the application of these rules to CLECs consistent with the criteria mandated in the Governor's Executive Order No. 97-02.

[15] RCW 80.36.300(6)(requiring that the Commission permit "flexible regulation of competitive telecommunications companies and services.").

Submitted this 5th day of February, 2004.

**AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON**

By: _____

Mary B. Tribby
Letty S.D. Friesen
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6475